

INDIA:
A PRELIMINARY DG ASSESSMENT

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I. Introduction

In May 2001, a two-person team of democracy specialists from Management Systems International (MSI) spent ten days with the staff of USAID/India “brainstorming” about the possibility of incorporating a new democracy and governance component into the next mission strategy. Planning for that strategy is now underway; the strategy is currently scheduled for submission to Washington in December. The team reviewed some of the vast literature relevant to the status of democracy, governance and economic reform in India. It interviewed a variety of government and private experts, held discussions with mission staff to determine how concepts of democracy and governance might be integrated into the existing program portfolio, and interviewed US Embassy officials in New Delhi and officials associated with the US Consulates in Mumbai, Chennai and Calcutta.

This paper does *not* constitute a formal democracy and governance assessment. Carrying out such an assessment in a country as large and complex as India would require several weeks and more expertise than was brought to bear on this assignment. The MSI team was asked to perform several tasks: 1) outline democracy and governance issues that constitute threats to development objectives; 2) suggest cross-cutting DG areas for potential mission involvement; 3) suggest possible approaches for achieving greater geographic focus; and 4) discuss those areas that emerged as possibilities for a discrete democracy and governance objective in India. The ideas presented in this paper constitute preliminary thoughts and not firm conclusions. More research and analysis are needed in order to develop any of the notions discussed here.

II. Democracy and Governance Issues

The team was asked to highlight “red flags,” or concerns related to the quality of democracy and governance that at least potentially affect the achievement of development objectives, including the over-arching goal of poverty reduction. India is now a fifty-year old democracy. Elections are frequent and power has turned over many times. The country has a lively political process with high levels of voter participation,¹ a vibrant civil society, an independent judiciary, a disciplined military that stays out of politics, a host of new parties representing new interests, and a relatively recent plan to decentralize power down to the local or Panchayat level. For much of the decade, economic growth has exceeded or hovered around 6%, thanks to a limited opening of the economy sparked by severe balance of payments problems and an unsustainable fiscal deficit in 1991. While statistics seem uncertain and there is an active debate in the country over the merits of globalization, it seems likely that the higher growth rate² has helped reduce poverty.

So what is wrong with this picture? What threats does the political system face? How can it make faster progress in reducing poverty? The Indian political system is a sturdy and flexible one. That the country has protected its territorial integrity in a dangerous neighborhood and in the face of a very diverse population is a remarkable testament. But there are many “quality of democracy” problems, and the quality of governance has clearly declined. The team notes the following problems:

¹ India may be the only country in the world that confounds the well-established connection between level of socio-economic status (SES) and voting. Generally, the higher the SES, the more likely one is to vote. In India, the poor, the rural and the illiterate routinely go to the polls.

² Much higher than the growth rate the country achieved from the 1950s through the 1970s – a rate so low compared to many Asian neighbors that it was scathingly referred to as the “Hindu rate of growth”.

A. Declining Institutional Capacity

Political and government institutions are declining in capacity at a time of increasing population, growing pluralism, rising demand, and increased intensity of demand from all sectors of society. Political parties can and do help aggregate interests and organize demand but they cannot meet that demand – the state must do that and for the most part it cannot respond in ways that are adequate and meaningful. The relationship here is a complex one – institutional weaknesses both result from increasing demands voiced by more and more sectors of society and also reinforce demands. There are several aspects to this problem:

1. Mrs. Gandhi's declaration of the emergency from 1975-7. Her reliance on authoritarian power and the use of populism to shore up her own support weakened democratic institutions (including her own party) and the observance of democratic rules and procedures. Democratic norms have relaxed, and the institutions have not recovered from her time in power.
2. Elections have assumed increased importance since Mrs. Gandhi first resorted to mass populist appeals for support in the 1970s. Democracy now seems defined primarily by and centered around elections. Voter turnout is very high at 60-64% in national elections and over 70% in Panchayat/local government elections. In recent state elections in four states, turnout was well over 70% in many districts. Even the most remote village is now involved in the political process. The stakes have increased, political competition has heightened, and election violence and fraud are on the rise. This kind of hyper-politicization requires the lubrication of vast amounts of patronage and rents. For example, the business community is concerned about increasing pressure from an ever-growing number of political parties for donations. With an anti-incumbent bias in voters and frequent turnovers in office, businesses must feel obliged to contribute to several political parties to protect their business interests. The huge Indian conglomerate, Tata, tried to establish a central campaign fund on which all parties could draw in 1998. The general idea was that businesses could deposit sums into the common pool and obtain "credit," without having to designate a contribution for a particular party. The parties were not much in favor of this idea and, in the end, the only contribution came from Tata itself.
3. There is very little connection between ruler and ruled except during elections. Turnout is high not only because of awareness even in remote villages due to the high level of party penetration but because this represents the one chance that ordinary people have to affect a decision or get something in return. Panchayat elections may be an exception to this general rule. There still seems to be some genuine enthusiasm and hope around these. Citizens generally seem to feel powerless to influence government decisions in between elections, and elected officials seem to have little interest in the exercise of their responsibilities, only in the winning of power.
4. The declining power of the Congress party since the 1980s has led to the development of religious (e.g., BJP, the Hindu nationalist party), regional, caste-based and nativist (e.g. Shiv Sena in Maharashtra state) parties. This has broadened the political spectrum and has permitted more voices to be heard, but it has led to greater government instability and the prevalence of coalition politics. It can be difficult to forge a consensus around needed reforms and difficult to govern. Coalition governments can fall apart quickly, and elections are frequent. This keeps the pot on the boil and shortens the time horizon of politicians, exacerbating competition. It can be very difficult to pursue reforms that may

bring short-term pain (for any important constituency) before they produce any benefit with politicians who do not expect to be in office very long. There have been some helpful signs of greater collaboration in the Lok Sabha (lower house) in the last year. As two examples, the ruling BJP and the opposition Congress party were able to work successfully on legislation needed for WTO accession and on the carving out of three new states from the old states of Bihar, Madhya Pradesh (MP) and Uttar Pradesh (UP). Politicians should gain skill in the art of coalition politics with experience but the fragmentation of the political spectrum guarantees some degree of instability.

5. The regionalization of politics and the turnover of more power to the states in the early 1990s have heightened political competition for control of the states. Parties based in 1-2 states control almost half the Lok Sabha (lower house) seats. Because they are not part of a national party with national interests and represent only their home state, such parties, when they gain Lok Sabha seats, are most interested in what benefits they can produce for their home state, rather than in the national interest. This could heighten rivalries between states over time.
6. The central government has pushed some power down to the state level and no longer tries to or can control states in the way that the Congress Party once did, but state civil services are far less effective and more corrupt than the Indian Administrative Service (IAS, or central government civil services, which makes key appointments to state level bureaucracies). Corruption in central government and state administration and in the political process is a rising problem, and it is one of which the population is well aware. It contributes to the marked anti-incumbency bias, which in turn leads to high turnover in some state governments and at the center. As one example, there were four Prime Ministers between 1996 and 1999, and the state of Uttar Pradesh (UP) has had 27 governments in 44 years. In some states, such as UP and Bihar, the two poorest and most populous states, it would not be much of an exaggeration to speak of the criminalization of politics, with increasing evidence of ties between mafias, dacoits and criminals and state politician. Criminal elements are used to harass opponents, raise money, steal voting booths and perhaps elections, and control the population. Weapons are widespread, gangs seem endemic and many state legislators are reputed to have criminal records or have criminal cases pending against them.

Central concerns growing out of these trends are how to increase the connection between the rulers and the ruled and how to increase central and state government accountability and responsiveness and delivery capacity.

B. Growing Intolerance

A second set of concerns revolves around a decline in tolerance, the bedrock upon which the diverse nation of India was founded. There has been a marked increase in organized and random violence, particularly communal, ethnic, tribal, and caste-based violence. A report submitted to Lok Sabha in 1998 noted that roughly half of the country's 538 districts faced some form of unrest, be it communal violence, an insurgency, gang rule or the like. The violence and conflicts have different sources and different dynamics and cannot easily be aggregated for analysis. In many cases, socio-economic change and uncertainties about identity and position in a changing world are at least partly responsible for growing intolerance. Fears and tensions are also often deliberately created or exacerbated by politicians for political gain. As one expert notes, the political mobilization of scheduled castes (untouchables), backward castes (low castes),

scheduled tribes (indigenous peoples) and religious communities has turned state politics into an arena in which politicians exacerbate differences between groups in order to consolidate support among their own group and then in power try to maximize immediate and visible benefits to their group, in order to face the next election.³

A major factor has been the rise in Hindu nationalism since the early 1980s. Hindu nationalist organizations go back to the 1920s. Gandhi was in fact assassinated by someone with ties to the RSS (Association of National Volunteers), the head of a family of Hindu nationalist organizations called the Sangh Parivar. This grouping now includes the largest student organization in India, the largest trade union in the country, the BJP (Bharatiya Janata Party, the political arm of Hindu nationalism and the current ruling party), the VHP (which concentrates on strengthening Hindu identity and unity and which led the Ayodha temple movement), and the Bajrang Dal (a paramilitary group). All these groups have promoted a chauvinistic rhetoric that has seeped into Hindu consciousness and has lowered the bar against violence, particularly violence against religious minorities.

The Sangh Parivar organizations are not the only ones in India using communal or caste appeals. Politicians of many stripes (Mrs. Gandhi was one of the first) have needed to find ways to attract support from new entrants into the political system.

1. Violence against Muslims

Violence against Muslims has been the biggest concern. Muslims are roughly 12.5% of India's population. They face considerable discrimination – one study using Indian Development District Data (1993) suggests that a higher proportion of Muslims in a rural district lowers both the education and health services available in that district.⁴ Their education level is low and their employment opportunities in both the public and the formal private sector are limited. They hold only half as many seats in parliament as their percentage of the population suggests they might hold.

Communal violence has been on the rise since the mid-to-late 1980s, although some would mark the start in 1981, when one thousand Dalits (untouchables) in a village converted en masse to Islam. Rising concern about conversions was much overblown by the press and by the Sangh Parivar, as were fears of Islamic fundamentalism. Islam was consistently described as an aggressive and intolerant faith and a threat to Hindu culture. Muslim birth rates were exaggerated. Anti-Muslim rhetoric became uglier and more extreme as the decade progressed. Certain Hindus groups began to respond as though they were the threatened minority.

Muslims constitute more than 20% of the electorate in roughly 35% of the parliamentary constituencies. In a first past the post electoral system, where 30% of the vote is enough to win a seat in a multi-party contest, Muslims are an important bloc of voters in those constituencies. BJP politicians have long claimed that Muslims are catered to because of their voting weight, reducing Muslim incentives to build bridges to Hindus. The BJP sees this "appeasement" as

³ See the excellent Myron Weiner chapter, "The Regionalization of Indian Politics," in India in the Era of Economic Reforms, ed. Jeffrey Sachs et al, 2000, 264-5.

⁴ As judged by the numbers of doctors, teachers and nurses. See Roger Betancourt and Suzanne Gleason, "The Allocation of Publicly-Provided Goods to Rural Households in India: On Some Consequences of Caste, Religion and Democracy," *World Development* 28 (2000): 2169-2182.

causing communal conflict.⁵ Hindu nationalists have also long argued in favor of a unified legal code for all Indian citizens and against the separate Muslim personal status code, which governs Muslim family matters.

In 1984, the VHP adopted the cause of replacing the Babri mosque at Ayodhya in Uttar Pradesh with a temple to the Hindu Lord Ram.⁶ In 1989 a district judge ordered the gates of the shrine open to Hindus, and Muslims were barred. Roughly 300,000 Muslims marched in Delhi demanding the return of the mosque in 1987. This was followed by a massive Hindu march. Violence escalated and in December 1992, some 200,000 Hindus gathered at Ayodhya and tore down the mosque. Six days of rioting, much of it organized, followed. In Bombay, the riots were the worst India has seen since independence. More than 1200 were killed, and most of them were Muslims, although there were Muslim attacks on Hindus and Hindu temples in revenge. Police played a role in the communal rioting as did politically-organized criminal elements. This is common in Hindu-Muslim violence - one scholar calls it an "institutionalized riot system."⁷ The violence is often not random but is well organized and is used for political gain. A number of Sangh Parivar organizations were banned for a time in the aftermath of the incident.

While 1992 saw a nadir in communal tensions between the two groups, one would hesitate to suggest that relations have improved. The increase in intensity of the Kashmir conflict over the course of the decade with growing civilian and military casualties and the eviction of Hindus from the Kashmir valley is a constant aggravating factor.

One scholar who has taken a careful look at Hindu-Muslim violence finds it to be largely an urban phenomenon. He believes that even when the Muslim percentage of the population is roughly the same, some cities (such as Aligarh and Mumbai or the former Bombay) are prone to such violence while others (such as Calicut) are not. The only factor that he can find to account for the difference is the extent to which multi-ethnic civil society groups exist and are active. In an interesting comparison of Calicut in Kerala state and Aligarh in Uttar Pradesh, he finds that Calicut has several mixed business associations. It is a merchant city, and its traders are active in joining associations. Hindu and Muslim traders do business together and they have formed strong bonds of trust. Mixed trade unions thrive as do social and cultural associations. Neighborhoods are integrated and there are many cross-cutting links between the two communities.

Aligarh by contrast does not have such a wealth of associational life. While it once had a mixed trade association, the group split into a secular one (to which Muslim members gravitated) and one affiliated with the BJP. There are separate credit facilities for each community and even the businessmen do not need each other. The small scale manufacture of locks is the predominant local industry and businesses operate in parallel rather than in integration. While it used to have integrated neighborhoods, there are few left now. When politicians began using criminal elements to spark violence in the 1930s, residents began moving to homogeneous neighborhoods.

⁵ Ashutosh Varshnay, "Ethnic Conflict and Civil Society: India and Beyond," unpublished paper, 2001, due to appear in the next edition of World Politics.

⁶ This was a dispute with a long history. The mosque was built in 1528 on a site where Hindus claim that a temple first stood to honor the birthplace of Ram. After almost a century of conflict, the government locked the gates of the mosque in 1949 and declared the area a disputed one. See Hardgrave and Kochanek, India: Government and Politics in a Developing Nation, 2000, 189. See also Thoman Blom Hansen, The Saffron Wave, 1999, 149-185.

⁷ Ashutosh Varshnay, "Ethnic Conflict and Civil Society: India and Beyond," unpublished paper, 2001, due to appear in the next edition of World Politics.

Both cities had peace committees, but in Aligarh they were single ethnic committees and probably served to exacerbate fear rather than diminish it. In Calicut by contrast, such committees are multi-ethnic and they work to spread information and quell rumor. Finally, in Aligarh, the press, which has political connections, has been very inflammatory. Varshnay believes that the prevalence of formal mixed associations in Calicut either puts pressure on politicians not to stir up ethnic troubles or reduces the incentives for doing so.

Most recently, tensions in Mumbai and Maharashtra seem to have risen. The Consulate tracks this to the ascension to power of a coalition led by the Congress party in 1999. Presumably the rhetoric is being used against Congress and not by Congress. The destruction of the Bamiyan Buddhas by the Taliban in Afghanistan again raised tensions. Korans were burned and public discourse became over-heated. In this instance, the police were vigilant and helped dampen violence rather than exacerbate it. Then in late May 2001, the Taliban announced that Hindus in Afghanistan (there are no more than a few hundred, in all probability) would have to wear a sign of their religion, like the yellow star worn by Jews in Nazi Germany. India denounced this move and it may cause a flare-up of anti-Muslim sentiment.

2. Violence Against Christians

In the past few years, violence against Christians has increased and seems in some way to at least temporarily have replaced anti-Muslim feeling. While Christians do not total more than 3% of the population as a whole and in many areas do not constitute serious competition for limited resources, in other areas like Kerala state, where they constitute one-quarter of the population, they have enough demographic weight to matter politically. Christians are among the poorest people in many states, and their community includes Untouchables and tribal peoples who converted in the hope of escaping discrimination. Christian institutions strive to better the lot of these people, whom the majority would perhaps prefer to maintain in a subservient position.

The same underlying sentiments seem to be at work here as in anti-Muslim violence – fear of large scale Dalit conversions to Christianity (the Sangh Parivar has long argued for a law prohibiting religious conversion), concern about yet another “intolerant” Semitic faith, and perhaps even outrage at Sonia Gandhi’s acceptance of the leadership of the Congress party. In Kerala, at least, Christians support the Congress party – if this is true for Christians more generally, then anti-Christian propaganda put out by the Sangh Parivar is a way of strengthening the BJP and weakening Congress. Incidents have occurred primarily in Gujarat, Orissa, Karnataka and UP. Gujarat seems particularly affected – it is perhaps worth noting that the BJP came to power in the state in 1998. Local media have also played a role in fueling violence, according to Human Rights Watch.

One observer traces the anti-Christian violence to the rise of the BJP to power in 1995 and then in 1998 and to the atmosphere of permissiveness it has established. Government response to incidents has generally been inadequate. Churches have been burned (one was damaged while the team was in India), schools and cemeteries destroyed, nuns raped, and Christians attacked or forcibly converted. In what was perhaps the most notorious and certainly one of the more gruesome incidents, an Australian missionary and his two young sons were burned alive in their car in January 1999 in Orissa state, reportedly by a local leader of the Hindu extremist group Bajrang Dal, which then went on to cut the arms off a Muslim trader a few weeks later.

As Human Rights Watch notes, the tendency with anti-Christian incidents as well as anti-Muslim is for local officials to arrest a few members of whatever groups are involved (to demonstrate that they have taken action) but not the leaders themselves.

3. Caste-based Violence

Caste based violence is yet another concern. Like Hindu-Muslim violence, it has a very long history. The violence is usually perpetrated by higher castes against Scheduled Castes (the 150 million strong community of Dalits or Untouchables) or Other Backward Castes (low castes) against Scheduled Castes. Sometimes Dalits strike back, and then a cycle of retaliation is begun. It is generally rural violence; urban migrants find it much easier to lose their caste in neighborhoods where they are not known. Some observers believe that caste-based violence increased in the 1970s and 1980s.⁸ The trend in the 1990s is unclear, although that violence is a problem is clear. As one example, in 1999, 17 Dalit tea plantation workers who were attempting to demand the release of 652 estate workers imprisoned subsequent to a prior demonstration over wages were murdered by police and administration officials in Tamil Nadu.⁹ That same year, in Bihar, the private militia of upper caste landlords killed 12 Dalits in retaliation for the killing of 35 upper caste villagers by Maoist guerillas. This private militia, Ranvir Sena, has murdered more than 400 Dalit villagers in Bihar between 1995 and 1999, according to Human Rights Watch. This is not the only private militia in Bihar – others exist, they include politicians and they operate with impunity.

Some would argue that violence against Dalits is deeply traditional. They question the notion of an increase and instead think that what is different is the amount of attention and protest that violent incidents attract. Even so, Dalit demands have become more strident over the years, and improvements in position can be deeply disturbing for higher caste neighbors. Villages are deeply conservative places, and a Dalit who refuses to remove the carcass of a dead animal from a high-caste villager's property may be asking for trouble.¹⁰ Police abuse also seems common.

The Dalit community as a whole remains mired in poverty. They remain on the bottom rung of the societal ladder. They have not benefited from redistributive land reform (to the extent that there were reforms, they tended to benefit tenant farmers who belonged mostly to lower castes and not Scheduled Castes), they are generally landless laborers, they often are too poor to benefit from limited assistance schemes such as the distribution of a milk cow (from where can they obtain the fodder?), and most subsidies seem to benefit the better-off (e.g., food distribution centers open only once a month, a problem for people who cannot muster the money for a month's worth of groceries at one time. The centers also sell a higher quality of grains and pulses than the poor can obtain on the open market.), and high losses from some poverty programs. The food subsidy program has become better targeted in recent years and is doing a much better job of reaching the poor than it was but can suffer very high losses during the distribution process.¹¹

Dalits do have protected access to government jobs, but this benefits very few in a community where illiteracy is a major problem. Discrimination in the formal private sector is still a serious

⁸ Oliver Mendelsohn and Marika Vicziany, The Untouchables: Subordination, Poverty and the State in Modern India, 1998. See particularly the chapter that begins on p. 44.

⁹ Human Rights Watch argued that there was a pattern of police brutality in the aftermath of caste clashes in TN's southern districts. HRW 1999 World Report (India Chapter).

¹⁰ The high-caste villager would not be able to touch the animal carcass because it is polluting. Up through the 1980s, the refusal to remove dead animals from the property of higher caste individuals was a common reason for anti-Dalit violence – it may still be common. Use of wells, temples and tea shops by Dalits is also a common point of contention.

¹¹ World Bank, India: Reducing Poverty and Accelerating Development, January 2000, p. 19.

issue. One recent study shows that a higher proportion of Scheduled Castes in the rural areas of a district leads to a lower allocation of health and education services in that area.¹²

While Dalit interests are better represented these days by political parties (e.g., the Bahujana Samaj Party, a Dalit party which first made headway in Punjab but has expanded into other states with some limited success), such support has generally not translated into the kinds of investments needed to improve their condition. It has not proved possible to organize Dalits nationally into one or two political groups – they differ too much in language, outlook and custom. Dalit attempts at political organization have generally faced the need to attract other communities in order to win seats. In some places they have attracted support from other backward castes and Muslims, due to class based appeals that emphasize economic subordination, but attracting broader backing under a banner of “untouchabledom” is highly problematic.

C. State Fiscal Deficits, Investment and Economic Growth

While an initial package of economic reforms in the early 1990s began to open up the economy and has generated higher levels of growth, the pace of reform has remained plodding and there have been some reversals. For example, privatization of loss-making state-owned enterprises has made little headway due to opposition from public sector unions. Other reform issues include subsidies for agriculture and electricity (which primarily benefit better off citizens), the inability to tax agricultural wealth, civil service reform, labor market reform, better targeting of poverty alleviation programs, continued tariff reform and continued liberalization of the regulatory environment for business.¹³ Many of these reforms, if achieved, would dramatically reduce government expenditures. Privatization could raise significant sums, which could be used to buy down debt.

India is very ambivalent about globalization. Hindu nationalists, such as the BJP, tend to support a more liberal regulatory environment for domestic business accompanied by protection from foreign competition. Businesses of course support some reforms but also tend to be protectionist. There is considerable rhetoric about the harmful effects of integration with world markets and much advocacy of economic self-sufficiency, a tradition of course that has a long and honorable lineage, going back as it does to Gandhi. While the virtue of continued reform is debated in the English language press and in urban areas, it does not seem to be a factor in elections.

The lack of reform in key areas has contributed to a growing problem with fiscal deficits. The central government’s fiscal deficit is now greatly compounded by the state deficits. India is increasingly borrowing to finance current expenditure. The growth in state deficits has been encouraged by central government bailouts, which have encouraged irresponsible behavior, and the lack of genuine fiscal decentralization which might make state, city and local governments more accountable to tax payers for how they spent revenues. There are even a few examples of desperate state governments taking over traditional municipal forms of revenue, such as property

¹² See the Betancourt and Gleason article mentioned earlier. The finding was the same when the proportion of Muslims was higher.

¹³ Food and fertilizer subsidies alone add up to over 1% of GDP. Both are widely viewed as excessive. While food subsidies can hardly be eliminated, they can be much better targeted than they are currently. The power sector is also highly problematic. Power shortages block industrial growth. High subsidies mean that tariffs do not cover costs. Providers do not cut supply to non-paying customers and theft is rampant. State Electricity Boards are losing roughly \$2.2 billion annually. Subsidies to the power sector account for about 10 – 15% of state fiscal outlay.

or profession taxes.¹⁴ As one observer noted, state governments tend to pursue populist policies like subsidies but at the same time are reluctant to increase taxes for fear of losing votes.¹⁵ The growing pressure on state finances also results from increasing demand for public services.¹⁶ An excessive central government civil service pay raise in 1997 has extended down to the state level.

State governments share power with the central government for infrastructure development and they control 2/3 of the power generating capacity. They are also responsible for primary education and for health services. They have substantial regulatory authority over business, and they own enterprises. They employ more people than the central government does and the number of state level employees has grown much faster than has the central government bureaucracy, showing a 20% increase between 1984 and 1994.

Added together, the combined central and state fiscal deficit remains at high levels. Of course, India's growth rate is higher today, so it is better able to sustain this deficit and it is not facing a balance of payments problem, but the effects are still very harmful. Interest payments keep climbing. The deficit means that the government hogs credit, depriving the private sector of needed resources for investment. It also constrains public sector investment in both infrastructure and the social sectors. In fact, public sector investment has been seriously squeezed because it is very difficult to cut current expenditures, such as payroll. India's infrastructure is in dire shape and needs considerable upgrading if the country is to compete successfully for foreign investment. One of the reasons the poorest states find it so difficult to attract investment is that their infrastructure is particularly degraded. Equally, education and health services are limited and of poor quality in many states. Without substantial improvements particularly in education, India will find it difficult to acquire a place in the global economy.

Foreign Direct Investment has declined some in recent years. Export growth has slowed. The country faces growing competition from a recovering East Asia. As the World Bank noted in 2000, India could find it difficult to take advantage of the next upsurge in world trade.

Some states, such as Gujarat, Maharashtra, Karnataka, Tamil Nadu and Andhra Pradesh, have moved forward with some reforms but still find it difficult to tackle others. Those states that have begun to reform are showing much stronger growth, contributing to rising disparities between reformist and non-reformist states. These disparities may generate more tension in coming years, particularly if the central government continues to use its resources to bail out the non-performing states. Last year, the central government cut back on transfers to the good performers and gave more money to the bad performers.¹⁷ Protests resulted. In time, however, discrepancies and the evidence of success could persuade the non-reformist states to fall in line with a reform agenda. Generally-speaking, it is the Hindi belt in the north (especially Orissa, Bihar, Uttar Pradesh and Rajasthan) that has proved most resistant to reform, although Rajasthan is opening up some and Orissa has pushed through power sector reforms. Three of these states, Bihar, Orissa and UP, are the largest states and also the poorest states. West Bengal and particularly Kerala have invested more in social development than other states and have made good strides in reducing poverty –

¹⁴ Gangadhar Jha, "The Seventy-Fourth Constitutional Amendment and the Empowerment of Municipal Government: a Critique," unpublished paper, 2000.

¹⁵ See the Myron Weiner chapter in ed. Jeffrey Sachs et al, India in the Era of Economic Reforms, 2000, 264.

¹⁶ See a good summary of economic reform issues, see the summary in ed. Jeffrey Sachs et al, India in the Era of Economic Reforms, 2000.

¹⁷ It is unlikely that the transfer payments to poorer states can grow. The central government already provides 65% of the state expenditures in Bihar and Uttar Pradesh.

Kerala in particular has very high literacy rates – but neither state is growing. Kerala's communist government faces a very high fiscal deficit and has established few if any incentives for investment. Unskilled labor is very high cost, the product of labor unions efforts. The state has a per capita income below the national average, industrial growth below average, high unemployment, the highest out-migration of any state, severe power shortages, and few investment opportunities for Gulf remittance incomes other than construction.¹⁸

Establishing a consensus around reform has proved difficult because the potential losers are numerous and often more powerful and better organized than the potential winners. For example, there are 20 million public sector employees, and the public unions have a history of confrontation with the government. No single political party dominates the unions, and there is nothing resembling a corporatist relationship. The difficulty in moving forward with reform also comes back to many of the institutional and political process problems mentioned in the first section of this report. Government capacity is low, particularly at the state level. There are fewer civil servants or politicians at the state level who understand the requirements for economic growth.

D. The Judicial System

Like all DG institutions, the judiciary's performance has eroded over the years. The institution is independent and generally renders good decisions. It has been active in protecting rights and in standing up to the executive. The Supreme Court has been active against corruption in the 1990s. NGOs increasingly use the technique of public interest litigation (PIL) to defend rights, in the absence of being able to persuade the executive or legislative branches to take action, and they find the courts sympathetic. As government responsiveness and accountability deteriorate, PIL remains an important bulwark for rights. PIL cases go directly to the High Courts or the Supreme Court. Despite the court's general commitment to rights, it is erratic – it is not always active in defense of minority and poor rights and it would be useful to know more about why. Police abuses are widespread and courts seem to do little about this problem.

The judicial system is hampered by huge backlogs (the total number is around 28 million), painfully slow case processing times (5-10 years or more if appeals and applications for execution are filed), few limits on the right of first appeal, at least some petty corruption at the state level, possibly a low level of knowledge about new aspects of the law (new commercial legislation, arbitration), and often weak enforcement of decisions. The backlogs and extensive case processing times mean that the lower courts do not work well as dispute resolution fora. By the time a judgment is rendered, circumstances may have changed so much that the judgment is virtually worthless, even presuming it can be enforced.

The delays have serious human rights implications for the poor who cannot put up bail – roughly 1 million citizens are in jail pending a charge or a trial. In Delhi's Tihar jail, of the 11,000 inmates, only 2000 are convicted criminals – the remaining 9,000 are all awaiting processing. This runs up jail costs and has a negative impact on all inmates due to crowding and fewer resources to spend on more people. It is said that some criminals want delays, in order to give

¹⁸ See the Myron Weiner chapter in ed. Jeffrey Sachs et al, India in the Era of Economic Reforms, 2000, 272, 282. According to the Dutch Embassy, which is involved in working in Kerala, state officials are beginning to recognize a need for reform. Remittances from the Gulf are declining, and there is an understanding that the current fiscal crisis makes it difficult to sustain social sector gains. Unfortunately, there are also strong lobbies for maintaining the status quo.

their henchman time to kill witnesses or cow them into submission, but this surely cannot apply to all individuals charged with a crime.

Reasons for the backlogs include factors that donors can help with and ones that it can't:

- vacant judgeships and the relatively small number of judges to carry the large case burden (the US has 107 judges per million cases, India only has 10.5 judges)¹⁹;
- inefficient procedures or the lack of use of procedures which could expedite cases, (resulting in frequent adjournments, frequent appeals – first appeals can be made for reasons of fact or law, the need to file for execution of a judgment, and court fees that have not been raised in years and thus encourage frivolous cases);
- lack of computerization and modern case management systems – existing systems exacerbate the backlog, augment delays and give rise to corruption;
- inconsistent case classification makes it difficult to consolidate claims based on common issues of law or fact, thereby slowing down processing;
- lawyers who prefer to drag out cases for one or more of the following reasons: they are paid for court appearances, there are too many lawyers in pursuit of too few clients and at least the younger advocates have a professional need to look busy and a desire to “milk” whatever cases they do get; successful senior lawyers by contrast are sought after and take on more cases than they can handle; and clients may need to pay in installments that effectively slow down the process;
- few cases settle out of court (defendants have little incentive to settle if there is no expectation of an adverse ruling in a short period of time; the same may be true of plaintiffs who have filed frivolous cases);
- the amount of time judges spend on administration;
- concurrent jurisdiction which means that higher courts are burdened with matters that could possibly be dealt with at a lower level. Six high courts have original jurisdiction which means they can be clogged with cases of very low monetary value. In states where the high courts do not have original jurisdiction, even very high value, complex cases must start in the lower courts, which may not have the expertise to deal with them,
- judicial absenteeism and short workdays; and
- growing demand without a commensurate increase in the number of judges.

The majority of the cases involve the government as one or both parties (a civil servant with a grievance, a state agency suing its regulator), so the government itself is a major contributor to the problem. The World Bank quotes a 1993 study that suggests that the government is the plaintiff or the appellant in over 60% of the cases and that the government is under pressure to appeal lost cases, lest the original suit appear frivolous. At minimum, officials involved in a losing case would like to delay finalization until they transfer to another post. The government appears to manage its litigation poorly (with little oversight of the advocates hired to pursue cases) and is often irresponsible, taking cases to court or appealing cases that it cannot win. It often loses. The bulk of these cases were in the areas of taxation, credit, rent control, urban land ceilings and labor relations.

At least in the lower courts, advocates appear to have the upper hand, and their interests are served by frequent delays. This is also the case for court clerks, who control the schedules and case files, and who accept unofficial fees (for rescheduling cases or producing files for example)

¹⁹ One expert, who has studied courts in Uttar Pradesh, thinks that more judges would not help, due to the fact that the interests of most actors in the system are served by delays. Robert Moog, Whose Interests Are Supreme? Organizational Politics in the Civil Courts in India, Michigan, 1997.

that if not formally sanctioned now seem to be accepted in custom. Judges are basically passive. They are isolated outsiders assigned to a two to three year rotation in a given district court. They have few tools at hand to counter advocates and can run into serious trouble if they do. Advocates form a closely knit community and are well organized. They may choose to boycott a particular judge, go on strike, or file a complaint against a given judge (for corruption, for example). Any of these actions may attract the attention of the High Court, which supervises the lower courts, and could threaten the possibilities for promotion or tenure. High Court judges, who are mostly chosen from the ranks of High Court advocates and not through the senior judicial service, may have very little understanding of lower court issues and little sympathy for lower court judges since they come out of the advocate community. Judges can be demoted or forcibly retired. It is therefore in the judge's interest to pass his assignment in a given district quietly and without conflict. Judges also have no performance incentives for speedier case processing or for reducing backlogs so there are not countervailing pressures. They are promoted on grounds of seniority and meeting a quota that does not seem difficult to meet and that also creates some perverse incentives for favoring some kinds of cases over others. They may even have an incentive themselves to delay difficult cases until after their departure for another post.

In India, there are not sub-groups of lawyers with differing sets of interests. Even the government does not have its own lawyers, but uses private advocates it places on retainers. They are very cohesive, and particularly at the level of the district court, their communication channels are excellent. Most lawyers at that level do not have offices but meet clients at the court compound. All lawyers are there, sitting under the trees in the courtyard or in sheds erected for their use or in the hallways of the court buildings themselves. It is very easy to organize collective action. The Bar Associations are well organized. There have been attempts at reform, but they have not made much headway. Strikes are not uncommon, and the government usually seems to back down in the face of them. The Lok Sabha passed a law a few years ago that would limit adjournments, but the law has not been introduced because the government is afraid to do so.

Non-enforcement of decisions is a problem at the lower court level. Most successful litigants must file for an application of execution. This process can take longer than the original case. If the police need to be brought in, both official and unofficial payments are involved. Many judgments end up being worthless. Many of these problems are not new. There are official reports going back to the 1920s raising many of the same issues.

The current Law Minister, who has been in place about a year, is interested in reform. Attempts have been made in the past few years to diminish the Supreme Court's backlog. The Supreme Court has computerized and modernized its systems. It reduced its backlog from 120,000 cases in 1994 to 28,000 in 1996 and has made progress since. Attempts to diminish backlogs are expanding to the High Courts. Some limited computerization has taken place in some high courts. The High Court in Gujarat, thanks to USPAO assistance, has become very interested in reform. One simple way to deal with High Court backlogs is to group like appeals cases together – if a decision is rendered on one, the same point of law then applies to the others. The Law Minister is also instituting a series of special fast-track criminal courts in 5 states to try to diminish the backlogs for those on remand. It is possible that if there were greater satisfaction with the lower courts, the higher ones would be less swamped with appeals.

The business community (at least the one made up of larger businesses) uses arbitration²⁰ or finds some other approach. It may choose to take the loss. Some trading communities have very effective organizations that offer non-formal dispute resolution. Only 15 - 18% of the cases before the High Court or the Supreme Court are said to be business cases, and in more than half of those, the government is a party. Banks do turn to the lower courts in the case of nonpayment of loans. In this instance, they have large numbers of cases and pay advocates by the percentage of money they recover and not by their time or court appearance. This reduces the advocate's incentive for delays. Banks also tend to have incontrovertible documentary evidence making the cases more straightforward and delaying tactics of less use. Still, one would like to know more about the impact of non-performing courts on businesses and on the economy as a whole. The World Bank presents a study of 1850 companies that were in the process of liquidation in the High Courts, 62% for over 10 years and 32% for over 20 years. The result is that little value is left in the end for unpaid workers or secured creditors.

One expert, Robert Moog, thinks that Indians recognize the failings of the lower courts and tend to avoid the system if they can. He notes that case filings per 100,000 population in the UP courts are very low compared to the U.S., for example.²¹ He believes that many cases do not go to the courts in the hope of dispute resolution but to harass opponents, protect honor, or as a matter of legal speculation. For example, a litigant might seize the land of someone else, forcing that person to file a claim but all the while holding on to the land while the case is processed. It is felt that a large number of cases are illegitimate or frivolous, with falsified evidence.

The very poor do not use the courts. They do not have the financial resources or the time (litigants must appear every time a case is scheduled and in order to have it rescheduled). There may be customary constraints, in which members of lower castes do not challenge members of higher castes, or legal illiteracy so that people don't know they have certain rights or that redress is an option. Finally, most cases are over real property disputes and the very poor and landless have little real property. People's Courts or Lok Adalat have been created (1987) as an ADR mechanism for petty rural disputes but it is not clear they are serving the intended purpose. Some observers think these mechanisms are serving well. In some states, they may be becoming backlogged. Lawyers may still be involved. In UP, the bulk of the cases seem to be petty criminal ones. The defendant is pressed to accept a hearing before Lok Adalat in return for a promise of a lower fine. There seem to be very few civil disputes that are resolved, the intended purpose of the courts. It is, however, not possible to generalize from the UP experience.

A separate set of consumer protection forums or courts (rather like the US small claims courts but without such a low financial ceiling) were set up. One judge and two other community members (one of whom must be a female) deal with consumer rights cases. While citizens are encouraged to use these courts without hiring a lawyer, it may be that lawyers are hired in the majority of instances. These courts are not yet backlogged, but that maybe because they are new.

E. Decentralization and the Problems of Growth and Urbanization

²⁰ The World Bank notes that arbitration often ends in a court appeal, although it thinks the Arbitration and Conciliation Act of 1996 may help with this problem. India: Policies to Reduce Poverty and Accelerate Sustainable Development, January 31, 2000, p. 45.

²¹ Robert Moog, Whose Interests Are Supreme? Organizational Politics in the Civil Courts in India, Michigan, 1997.

Most informants agree that with the passage of the 73rd and 74th amendments in 1992,²² democratic decentralization has begun, somewhat erratically, to take place. Some observers think that decentralization has not advanced beyond the creation of democratically elected bodies and that no worthwhile decentralization of power and responsibility has taken place.²³ This is probably an overstatement but it seems correct that the commitment to decentralization by the states has varied. The capacity to strengthen local government has also varied. A new political structure of local, mid-level and district councils exists, but the authority and resources of these councils may be minimal. In many instances, the district remains the basic unit of administration and the state legislature and administrative apparatus, subject to limitations imposed by the central government, still control service delivery, such as the availability of clinics and schools. In some states, such as Andhra Pradesh (which has otherwise been very reform-minded), very little authority has been turned over to local councils. Other states, like West Bengal, Kerala, Gujarat and Maharashtra have a commitment to local government that precedes the 73rd and 74th amendments. Some of the differences in approach are undoubtedly due to confusion. There simply is not much experience or comfort with multi-level government. States, as one observer noted, are writing their own script.

Some observers of decentralization think the process, where taken seriously, has increased administrative accountability – that Panchayat Councils can to some extent hold the state civil services accountable for service delivery. Women and Scheduled Castes are gaining a voice on these councils and may advocate for different kinds of expenditures. However, experience is mixed. Two scholars have found that the net effect of decentralization in two districts in Karnataka has been to increase the share of resources going to prosperous groups at the expense of poorer groups, because local elites now control the agenda and the formulation of local demands.²⁴ This is an important concern in a divided society, where local rivalries and tensions may be strong. The same scholars also argue that decentralization in Karnataka has increased rates of political participation, enhanced accountability, and made government institutions more responsive to the needs of citizens.

Fiscal decentralization remains a major issue. If Panchayats end up with few responsibilities and even less money, decentralization will remain chimerical and an opportunity to connect governor and governed and to improve responsiveness will be lost. Decentralization also appears at this juncture to increase the costs of government, so it would be unfortunate if the potential for gain were not maximized.

There are 21 cities with populations of over 1 million people. For the most part, urban areas have been badly managed, with considerable state interference, much of which has not been for the good. Traditional revenue sources (in addition to transfers) included octroi (or a local customs duty now cancelled by the central government in all cities except for those in Gujarat, the Punjab and Maharashtra) and property taxes (which due to corruption, rent control, legal challenges and poor collection are hardly a growing source of income). States had a tendency to take authority away from municipal corporations and to create a plethora of parastatals – for slum clearance, water supply, and the like. These new entities were not accountable to state governments. Executive authority was often fractured – between an elected council and its committees and a state appointed commissioner. Frequently, municipal councils were suspended. As of 1989, 39 out of 71 municipal corporations (the councils for the largest cities) were suspended. These arrangements tended to weaken municipal institutional capacity or to keep it from improving over

²² The first deals with local governments, the second with municipal.

²³ Mathur, Om, Decentralization in India, Asian Perspective, 2000

²⁴ R. Crook and J. Manor, Democracy and Decentralization in South Asia and West Africa, 1998.

time. Mumbai may have been one of the few cities with a strong municipal corporation and some ability to fend off state government. Perhaps the biggest boon of the 74th amendment is that it requires new elections no later than six months after the dissolution of a municipal council.

Urban living conditions are inadequate, particularly in slum and working class quarters. Providing basic services is highly problematic, and environmental degradation can be severe. The share of municipal authorities in total public sector revenue may have fallen by as much as 40% since 1960. Urban populations can be restive and given to violence, particularly in hot weather.²⁵ Violence is not only communal but may be directed against recent migrants.

The 74th amendment (twelfth schedule) lists some 18 tasks or responsibilities that *can* be turned over to municipalities if the states desire.²⁶ Even when a state does so desire, as in the case of Bihar, its municipalities may have very slight capability and few revenues on which to draw. Secondary cities are in a particular bind, with very low management and technical capacity and few NGOs to help.²⁷ Population growth and urban-rural migration are also taking a toll. With one third of India's citizens now living in urban areas and likely to increase over time, the problems associated with growth at the municipal level have become increasingly severe. In 20 years half the population living in the southern states will be urban. There are now signs of growing peri-urban areas with linked cities, akin to what one sees in the northeast corridor of the U.S. Growth tends to throw up new problems that require new or more complex capacities to solve. The status of urban areas is also important because these are the sites that draw investment. More needs to be done to link municipal government, business and civil society together to manage growth.

Apart from the growing list of services that municipalities are expected to provide under decentralization and the thorny issues of revenue generation and state fiscal transfers, municipalities must also deal with a growing number of actors.²⁸ Each of these actors – from business, NGOs, regional political parties and caste- and religious-based institutions -- has something to say about how their cities are managed. The typical vertically-integrated and hierarchical departments found most often at the municipal level have proven too rigid and unresponsive in a new environment that is increasingly complex and demanding. Managing the legitimate interests of citizens' groups has placed increasing strains on a bureaucracy that still has not come to terms with the mismatch between funding levels and new functions.

Some municipalities have shown an interest in privatizing services. Others (like Ahmedabad the capital of Gujarat) have cleaned up their deficits in order to qualify to issue municipal bonds. Ahmedabad is an interesting example of what can be accomplished. The city was broke in 1994, with significant debt. An appointed administrator managed to increase income from the octroi and other taxes and cut expenses. By 1995, the city had largely recovered. It was probably

²⁵ Poorer neighborhoods in Delhi are currently in the grip of mass hysteria over "monkey man" sightings and attacks. Deaths and injury have resulted. To calm fraying tempers, the government has ceased its ubiquitous summer practice of "load-shedding" or scheduled power cuts for the time-being.

²⁶ The All India Mayors' Association filed a writ in the Supreme Court a year ago asking that the "shall" and "may" in the amendment be interpreted as a "must."

²⁷ Informants and written sources generally agreed that problems in secondary cities and towns were particularly acute.

²⁸ Municipal services currently include public health (water supply, sewerage, sanitation and conservation), public works (maintenance and repair of local roads and works), public safety (street lighting and fire-fighting), public conveniences (crematoria, parks and playgrounds), public instruction (primary education and libraries), management of common property, and a host of other regulatory and developmental activities.

helped by the fact that Gujarat's fiscal health, at least prior to the earthquake was good. Following recovery, the city wanted to issue bonds so it asked for a credit rating. The very process of getting a rating requires considerable transparency in financial management. Today there tends to be a confluence between reformist states and innovative municipalities.

F. Corruption

Corruption in India is systemic and pervasive rather than sporadic. There is a strong sense that it has grown over time. The degree of central and state government control over the economy makes this inevitable. Corruption appears to run across all sectors of USAID involvement, with the possible exception of the Title II program, where the figures on losses are extremely low in comparison with other developing countries.²⁹ It was not clear to the team the extent to which the extraction of bribes and bid rigging, for example, are predictable as opposed to discretionary in the Indian context. Problems with transparency of procedures as they relate to permits, licenses, records management and procurement, tend to emerge as themes running across sectors. It is clear that with the decline of central authority, corruption is now even more a problem of the states than of the central government.

G. The Seven Sisters

The seven sisters are the seven states in the northeast bordering Bangladesh, Bhutan, Burma and China. Roughly 200 different tribal groups inhabit this area. Assam is the biggest of the states, with a population of 2.5 million. The others are Manipur, Tripura, Nagaland, Mizoram, Meghalaya, and Arunachal Pradesh. All seem troubled by insurgencies or unrest due to somewhat related causes. The problems are complex and require more study than was possible in the team's short visit. There are serious human rights issues in these states. Violence is increasing, if only incrementally.

In Assam, the illegal immigration of Muslim Bangladeshis for work has swelled the state's population, taken jobs from locals and generated communal tensions (native Assamese are Hindu) as a by-product of the fierce competition over limited resources. Migrants from West Bengal state increase the competition, and non-Assamese Hindus have been targets of violence in the last year. Problems are compounded by government neglect – the level of development is low and native Assamese feel their resources are flowing into central government coffers while little is returned. Tea remains the major income producer for the state, although the state also has oil. There are 43 insurgent groups in the state and the number of victims of insurgency-related violence edges up from year to year. The United Front for the Liberation of Assam is the largest group, and it controls portions of the state and regularly creates mayhem, although it has been losing cadres in mass surrenders in the last 18 months. This suggests leadership problems. In the just-passed elections, which Congress won from a BJP-allied local party, 50 people were killed despite the presence of 50,000 troops. In 2000, 409 civilians lost their lives along with 279 security forces and terrorists. Property damage also occurs – the UFLA twice blew up an oil and natural gas pipeline in 2000, while a third attempt failed. Proposed peace talks have gone nowhere.

In Manipur, 18 insurgent groups are active, all ethnic based. In 2000, 237 persons lost their lives. There is spillover from Nagaland terrorism, since there are Naga inhabitants in Manipur. One of

²⁹ For example, USAID staff informed us that losses in transportation constitute less than .1% of all goods shipped. The mission is cognizant of the fact that corruption runs through most sectors of USAID involvement. It has taken precautions to insure that USG funds are spent responsibly.

the problems here is ethnic conflict between Nagas and Kukis, another tribal group. There are also Islamic terrorist groups but most of them remained passive in 2000.

In Tripura, a state that appears to be an ethnic stew, 405 people were killed in terrorist incidents mostly brought about by two groups. Again, tribal terrorists targeted the Bangladeshi population. Many tribal families seem to have lost their land to Bangladeshi migrants. Over 10,000 non-tribals have fled from their homes. Bengali militant groups have arisen beginning in 1999 in response to the threat. Christian-Hindu issues also factor in. Kidnapping, for ransom, is also a serious problem. According to a Ministry of Home Affairs Report, there is growing evidence in the state of a deepening nexus between the major political parties and the terrorist groups. There is also a certain undermining of the civil service apparatus – bureaucrats operating in such an insecure environment are going to be very careful about what they undertake to do. Commercial contracts are allegedly being allotted to terrorists or their designees, for example. Some of these “liberation” groups may be on their way to becoming simple criminal gangs, indulging in extortion and kidnapping, and protected and used by politicians to advance their interests.

There are also growing links between terrorist groups, not only within Tripura state but within the region as a whole.³⁰ Tripura has become a corridor for arms pouring into the northeast from Bangladesh and Southeast Asia. The state shares a long border with Bangladesh and terrorists can easily seek safe-haven across the border.

Nagaland has also witnessed insurgency, but the casualties are lower here because a cease-fire has been in effect since 8/99. Arunachal Pradesh is suffering from a spillover effect of these insurgencies, becoming a hiding place for insurgents escaping state authorities. Meghalaya copes with two militant groups but the casualties are few, while Mizoram is largely violence-free.

These disturbances do not pose a serious threat to the Indian state, but as border states they present an entry point for foreign governments to make mischief and for arms to flow to different parts of the country. Difficulties for Bangladeshi immigrants have already caused tensions between Bangladesh and India and last year there was a border clash in which some died. China is suspected of supporting some terrorist groups, while Bhutan may be as well. The funds spent on security forces could be better spent on social sector investment. If it is true that terrorist groups are becoming linked to parties or politicians, this is worrying. Like the growing ties between criminals and politicians in UP and Bihar, this suggests an erosion of political institutions.

H. Kashmir

The team did not attempt to assess the Kashmir problem, given its limited time in country. This new phase of militancy dates back to 1988-9. Casualties in 2000 increased by 1,000 over the previous year to a total of 3,288.

The conflict has largely moved from the Kashmir valley, which Indian forces gained control of in 1996. Hindus have been driven out of the valley, and Srinagar and other towns now seldom see engagements between militants and the army. While opposition may have been largely crushed in the valley, this should not suggest that India has won any support from Muslim Kashmiris. The human rights abuses on the government side, just as on the militant side, are profound and serious. They include targeted assassinations, custodial killings, torture and disappearances. It

³⁰ ICM, South Asia Terrorism Portal (SATP) India: Assessment 2001, www.icm-satp.com/india/assessment_india.htm.

has proved difficult to document abuses – human rights activists have been threatened and killed. The state Human Rights Commission is unable to investigate abuses committed by the army or other federal forces – the army investigates itself and does not release its findings.

The fighting has moved to the more rugged far northern and southern borders of the disputed territory. While militant groups still recruit from among the local Muslim population, many groups have become predominantly Pakistani with Afghans and probably Arabs sprinkled among them. There has been a notable improvement in the fire power available to the insurgents in the last year, and this may be responsible for the increase in victims. The perhaps growing dominance of outside guerilla fighters or mujahiddin represent a serious problem. They have no ties to the local population and are unaccountable to anyone inside the country. They need show no restraint and are likely to engage in acts of extreme violence without giving thought to the reprisals that might ensue. While Indian army attacks on civilians in the valley have decreased, they have increased in the southern border districts. The army has recruited ex-servicemen to serve as Village Defense Committees in Doda and southern border districts where the Hindu and Muslim population is evenly divided. This move is certain to increase tensions.

Obviously, Kashmir is the biggest threat to regional security in South Asia. India is not going to release Kashmir, and Pakistan is unlikely to give up its support for Kashmiri independence or incorporation into Pakistan itself. A more in-depth look at the prospects for peace-making or conflict mitigation might be merited. As noted, the team chose to concentrate its limited time in other areas that appeared more amenable to the standard tools of development assistance. Also, the Indian government is notably hostile to outside intervention.

Other negative effects include an increase in defense expenditures over the last ten years, contributing to India's fiscal deficit and drawing resources away from development investments. The pervasive human rights abuses perpetrated by the state erode democracy and lower the bar for certain kinds of behavior, making it more acceptable.

I. Commitment to the Poor

There are 300 million poor in India or 35% of the population. The percent of the population living below the poverty line fell from 43% in 1983 to 38% in 1988 to 34.4% in 1994. India has also reduced the depth and severity of poverty, so that even those far below the line were likely to see some improvement in consumption. The pace of reducing poverty seems to have slowed in the 1990s, particularly in rural areas. No one seems very clear why. Theories involve statistical anomalies in the surveys used to measure poverty, inflation which most affects the poor, slower growth of demand in agricultural labor, and a slowdown in agriculture productivity growth. India's higher growth rates in the 1990s do not seem to have generated more off-farm employment. Poverty seems more and more concentrated in the poor states, particularly Bihar, UP, Orissa and MP.

The state's commitment to improving the welfare of the very poor has in some respects been unwavering but there has been very slow progress on social justice and equality for the poor, particularly vis-à-vis minorities, Scheduled Castes and Scheduled Tribes. As noted in earlier sections of this paper, discrimination remains a problem, subsidies are poorly targeted and the losses can be high, and primary education is not taken sufficiently seriously. Court decisions on behalf of the poor may go unenforced, while the police often act for the rich or are at least perceived to do so. Political organization along caste, region or community lines makes it difficult for the poor to organize in pursuit of common interests. Groups tend to be organized along vertical lines of patronage and they try to cut special deals for their community. Demands

for change are increasing are however increasing. Democracy is a powerful fermenting agent, and it causes people to question inequalities and hierarchies once accepted as part of the natural order.

II. Linking DG with Other USAID Sectors

In the era of economic reform in India, one finds activists and arguments at both ends of the spectrum – from the vestiges of Congress party socialism and the Naxalite movement to those firmly behind the forces of globalization and the integration of markets. Our bias in favor of linking a democracy program to other sectors, particularly economic growth, reflects a belief that the democratic process offers the best way to consolidate a market economy and deal with the problems of growth. Only a democratic polity can embody the compromises and commitments that are needed to bind government and the opposition to a consensus on a market-oriented and developmentally sound framework for growth.

A. A Linked EG-DG Program

The team proposes that the mission seriously consider designing a linked Economic Growth-Democracy/Governance program focused on state fiscal reform in one state, taking a holistic approach to trying to obtain key reforms needed to reduce the deficit, to ensure that vulnerable populations are protected in the process of reform, and that governance improvements are made (corruption control, better accountability, responsiveness). The rationale for such a program is to permit over time increased investments in social and physical infrastructure to attract investment, promote growth, and reduce inequities and poverty. The team recommends working in only one state because of the size of the states, the expected level of resources and the intensity of the effort required to make progress. However, any such strategy should include if not a replication plan then certainly a dissemination plan to share the experiences of that state in bringing about reform and the benefits that result. Some reforming states have already begun to meet to share lessons learned but a broader platform could be very useful. In addition, any such strategy should be accompanied by action research that dissects exactly what variables or factors blocked or permitted reform. If blockages were overcome, how did that process work? This is important information for other states undertaking reforms.

There has been a general failure to build much awareness publicly and in key sectors of society about need for reforms. There needs to be much more basic economics education – for example, through the vernacular press or with unions with respect to labor market reforms that are so rigid that they push people into the informal sector and so do little to protect anyone. Broader public discussion is needed about what needs to be reformed and why. Efforts are needed to develop a consensus around reform and bring in stakeholders. Thought needs to be given to how to mollify or compensate losers.

DFID is helping set up a Center for Good Governance in Andhra Pradesh. This will serve as a kind of public sector think tank for governance improvement. Such an idea could have merit for another reformist state. It would be possible to weave in elements of USAID's planned urban and power sector/agriculture programs, all of which are important reform areas. USAID might achieve better results with a holistic approach – in other words, we could see a greater multiplier effect with at least some other USAID sector investments made in the same reforming state.

In a superficial survey of the reformist inclinations of the various states, Karnataka rises to the top. The team looked for a state that was both interested in reform but also not over-supplied

with donors. Karnataka is one of the World Bank's concentration states, and their much larger resources can minimize the pain of some of the changes. The state's Chief Minister has an excellent reputation and a reformist bent. Senior state civil servants see an impending fiscal crisis and want to forestall it. They are especially concerned about the power sector. The State Finance Commission, which determines how much money will flow to local government, is very progressive. The state also has the country's most progressive Freedom of Information law. It has increased its own transparency in procurement and is trying to tackle corruption. Karnataka has a tradition of good administration. It is blessed with substantial social capital and has a vibrant civil society. It has done quite well in terms of diminishing unnecessary business regulations. It also is very competitive – it keeps a close eye on reforms made by other states in south and west and does not want to fall behind. Its urban management seems better than many states, according to one expert.

Second choices among states could be Madhya Pradesh (where DFID and the ADB are working – this is a very poor state), Gujarat (an ADB concentration state), Maharashtra, or the new state of Chhattisgarh, which has been spun off from MP.

If the mission is planning to look seriously at education or an expansion of health services, it makes most sense to do so in a reforming state where there is some chance of increased resources for investment in the social sectors.

B. Urbanization and Growth

The existing USAID/India program is working on some of the important technical issues associated with urbanization and the environment. It intends to continue with this work. Currently, the program does not address some of the more overtly socio-political problems of urbanization, such as changing attitudes in government and managing increasing demand from citizens. Potential areas for further exploration, therefore, could include:

- Surveys and analyses to help in better understanding the political problems associated with growth. Examples might include an examination of the role of migration in response to employment opportunities and caste anonymity, and the effects of the lack of basic infrastructure on the poor and other disenfranchised groups. Potential USAID partners might include the Institute of Environmental and Urban Development and the National Institute of Public Finance and Policy.
- Strengthening municipal level groups like Mayors' associations. There is some evidence to suggest that the state-to-state competition found in some parts of India may be transferable to the municipal level. Beyond competition, however, some municipalities in India have adopted experimental approaches to management that deserve heightened attention by other urban bodies. The mission has already done some work with the All India Mayors' Association.
- Concentrated program of exchange with municipal officials in similarly sized U.S. cities. To increase impact, this should be focused on specific departmental functions; reach those members of the municipal bureaucracy less likely to be transferred; and be carried out only in targeted states and municipalities, ideally those already receiving other USAID sector support. ICMA has supported sister city programs in other countries and could be a good partner for this sort of program.

- Coalition-building among diverse citizen interest groups to create greater consensus on the nature of problems and proposed solutions. This could entail introducing concepts of shared governance functions between individuals, community groups and municipal government departments. The Bangalore Report Card model has been held up as an example of effective interaction between citizens and government. It is interesting not only because it comprises a means for holding public officials accountable for the delivery of services, but also because it effectively channels citizen demand into a limited number of areas that are perceived by officials as manageable. (For more information see ideas.uqam.ca/ideas/data/Papers/wopwobago1921.html)

C. Corruption

There are considerable government sensitivities to foreign donors addressing corruption. Recently, when the ADB tried to obtain approval for terms of reference for a broad-scale governance survey, which included some questions concerning corruption but was not wholly targeted on this issue, the government objected. The sensitivity as well as the scale and pervasiveness of corruption argue for the following:

- Not isolating corruption as a stand-alone programming area. Given concerns expressed by the Embassy and others, this is not likely to be a tenable way to address the problem.
- Incorporating anti-corruption measures into the existing USAID portfolio. Concentrating on current areas of USAID assistance would also increase the likelihood of having a direct development impact. Stand-alone anti-corruption programming, on the other hand, would be more difficult to trace back to the sectors of USAID involvement.
- As with other portions of the portfolio, focus on states where the policy environment is conducive to reform efforts and where the opportunity to demonstrate impact is greatest.
- Wherever possible, USAID's anti-corruption activities should complement the ongoing state-focused work of DFID, the ADB and the World Bank, who appear to be tackling the larger issues of public sector reform.
- The States that appear as likely candidates are Andhra Pradesh, Madhya Pradesh, Karnataka, Maharashtra, and Gujarat. Kerala is something of an anomaly because of its socialist leanings but is interesting because of its high levels of civic participation. Tamil Nadu could also be interesting, and USAID has some programs there, but the levels of politicization are very high.

The lens the mission might adopt in applying anti-corruption measures across the portfolio could include the now fairly standard criteria for achieving good governance: transparency, accountability, predictability, and participation. Additional criteria might include such things as credibility and legitimacy, though definitions of these terms are generally too vague to be of much use.

In deciding the mix of anti-corruption activities across the portfolio, the mission could consider both "institutional" and "societal" responses. While the list of possible responses is long, our discussions lead us to believe the following areas may deserve further exploration:

On the institutional side:

Strengthening the enabling environment for greater competition. In addition to those activities the mission and other donors are already pursuing to decrease the government's role in economic affairs, there may also be scope to work in such areas as:

- Transparency of process. Private sector investment opportunities are conditioned on the existence of specific government policies and programs that encourage private sector entry and a transparent system of evaluating bids and awarding contracts.
- Competitiveness of bids. Transparency and public accountability are best achieved by using a competitive bidding process to select contractors.
- Stable policy regime. Private investors, whether they are domestic or foreign, seek a policy regime (including such elements as the tax and investment frameworks) that is both stable and predictable.
- Streamlining and making more transparent permit requirements.
- Strengthening financial management systems to do such things as expose duplicate payments, double-salaried staff, etc.

Societal reforms include changing attitudes and mobilizing political will. This suggests a sectorally-linked approach that would include:

- Surveys and diagnostics that could help in exposing the real costs of corruption. By identifying points along the system where corruption occurs and quantifying its costs, arguments against corruption become more focused, rational and dispassionate. The World Bank Institute has created a set of diagnostic tools that could be useful should the mission decide to pursue this at the state level.
- Public awareness campaigns through consumer groups and business associations and investigative reporting that would increase understanding about the link between corruption and poor public services, lower investment, smaller growth rates, and inequality.

Corporate Governance

The Confederation of Indian Industries (CII) has established a code of good corporate governance and has encouraged its 4,000 member companies to adopt it. It is unclear, however, how many of these companies are following the code's guidelines. These guidelines adhere to the international norms of providing:

- Operating systems, balance sheets, and cash flow statements that compare current period and year-to-date performance to target performance and previous year performance.
- Management comments about current performance that focuses on explaining the deviations from the target performance and revised performance targets.
- Information on a company's market share.

- Minutes of management committee meetings.
- Financial analysts' reports for the company and its major competitors.
- Employee attitude surveys. Customer preference surveys.
- Guidelines concerning Board composition, selection and transparency of procedures.

USAID/India is already planning to expand its work under FIRE to include elements of corporate governance. We encourage this, particularly since recent research has shown that countries with stronger corporate governance protections for minority shareholders have much larger and more liquid capital markets.³¹ In addition to activities that would institutionalize corporate and legal regulations related to governance, the mission might also work to popularize the concepts of good corporate governance through:

- Press events among CII member companies that adopt the principles of good corporate governance
- Promoting the development of a strong financial press by disclosing information, and preparing short objective articles and editorials defining the concept of good corporate governance for publication in the business media.
- Encouraging the media to publicize corporate governance reforms by providing success stories from regional and national business associations.
- Incorporating the principles of good corporate governance into the agenda of media seminars or workshops held regularly by institutes and associations

III. POSSIBLE SECTORAL DG PROGRAMS

The team was asked to assess possibilities for a purely DG program, relying primarily on ESF funds. It is important to note that ESF funding can be erratic from year to year, requiring a flexible strategy that can be ramped up or down. The mission should also take into account the preferences of the new administration, to the extent that these are known. Finally, the Indian government has many, many sensitivities about its status as a democracy and about foreigners identifying flaws they would like to help fix.

A. Judicial System/Court Reform

This is an area where USAID could potentially intervene. Much more analysis is needed. The opposition of the advocates to key reforms may be a real barrier to progress. The World Bank is looking at court reform in UP and AP. It proposes to start with empirical work to better understand the nature of the problems and also is thinking about helping make the government a more responsible and better litigator, in order to reduce the extent to which the government is clogging the courts. It might also provide training to government officials to help prevent actions

³¹ Sullivan, John, Corporate Governance: Transparency Between Business and Government, Center for International Private Enterprise, March 2000

that contribute to the loss of cases, such as not complying with the formalities for terminating an employee.

USAID support could include a focus at the center on:

- involving different constituencies to develop a reform plan (judges, NGOs, Bar Associations) that would be a consensus document and then following up with implementation assistance. Any reform attempt without advocates is likely to meet defeat,
- expanding ADR and arbitration, including strengthening of the Indian Council of Arbitration,
- looking at legal aid for the poor who are charged with crimes or for disadvantaged groups,
- developing other processes to move some of the government cases out of the courts,
- supporting alternatives to keeping poor citizens in jail while waiting charge and try and helping clear the 1 million backlog of such cases,
- more work on PIL (perhaps). The team understands that the attitude toward public interest litigation depends on individual judges and that there is actually no legal framework for it, and
- developing a program of upgrading of skills for judges in new areas such as the recent ethics code (this would require more investigation because judges are said to be resistant to training).

A program could also include a state focus to implement reformed procedures and to develop new case management systems. It could also be worth taking a look at corruption and personnel management issues in the lower courts. A state with a reforming high court Chief Justice should be selected.

Finally an alternative would be to work particularly on the higher courts which along with the Supreme Court tend to be the direct recipients of public interest litigation (which bypasses district and tehsil courts). Declogging the high courts might allow them to pay more attention to matters important for basic rights. The high courts that have the greatest backlogs are Allahabad, Calcutta, Mumbai, Chennai and Kerala.

The first step in developing a program would be to conduct a proper assessment looking at the technical and political issues involved in reform, and assessing the role and needs of the prosecution.

As noted, the World Bank intends to work on court reform in UP and AP. The ADB has done something on banking and the courts (dealing with non-performing loans). The USPAO has done work with the Gujarat and Maharashtra High Courts on reform and is interested in ADR. Seemingly not much work is going on in this area by donors.

One advantage of this arena is that while it is a difficult one and resistant to certain kinds of reforms, it not a hyper sensitive one. Another is that the system is fairly top down so having impact may be more straightforward here than in other areas. Case management, particularly involving computerization, is not inexpensive so careful calculations would have to be made concerning how much USAID could take on and what the replication issues are.

B. New State Focus

Three new states have recently been carved out of three existing provinces, UP, Bihar and Madhya Pradesh. One attractive approach could be to select one of the new states and to work with it on setting up democracy and governance systems and procedures that try to address or forestall some of the problems raised in the first part of this paper. Options might include establishing a Center for Good Governance, ensuring that systems and processes are transparent and protect integrity, encouraging participation and supporting decentralization, strengthening capacity in key areas, and the like. An assessment would need to be done of the chosen state to focus limited resources to the best advantage. The MPP makes a commitment to working in the new states.

Of the three states, Chattisgarh perhaps emerges as the most interesting. The state has been hived off from MP so it has inherited a set of pro-reform attitudes. State leadership is quite clear that it wants to continue on a reform trajectory. Chattisgarh inherited one-third of the power generators from MP and will be in the position of selling power to MP so it may have a way to address its power sector issues. The new state has a population of 15-20 million, and is heavily tribal.

C. Communal or Caste Conflict

This is without doubt a sensitive area, and it may be one that it is impossible to work in, but the mission should probably take a further look at the possibilities before it decides. With the team's short time in country, we do not feel we have much of a grip on possible programming interventions. There is a real need to counter the prevailing political rhetoric. Possibly this could be done through media and civil society groups. Perhaps more could be done through human rights groups (some of which cannot take funds from foreign donors because they would have to turn over the names of their monitors in Kashmir and the northeast to do so, putting those informants at grave risk), legal alternatives (anti-hate speech or crimes legislation) and the courts. More could perhaps be done in terms of conflict mediation and skill building.

Much more needs to be known about each kind of violence (anti-Muslim, anti-Christian and anti—Dalit). Conflict areas need to be mapped and the dynamics explored more fully in order to establish if there are reasonably points of intervention for a donor with fairly small resources. Ashutosh Varshney notes one example of Bhiwandi, a textile center near Bombay (Mumbai) that was riot-prone in the 1970s and 1980s, but where successful multi-ethnic neighborhood groups were deliberately constructed in the 1980s and have helped in diminishing tensions. When violence broke out in Mumbai in the aftermath of the Babri mosque destruction, it did not in this city. The extent to which such approaches would work elsewhere or the scale with which they need to be undertaken to have any result would need to be explored.³²

The mission could also look for opportunities in other parts of its portfolio to try to build cross-community cooperation. For example, since Gujarat has problems with both anti-Muslim and anti-Christian violence and the mission has a large rehabilitation program in the state, this might offer opportunities for building confidence. Both CARE and CRS work extensively with and through women's groups in the state – are these multi-ethnic or could they be made so without rendering them dysfunctional? USAID's urban efforts, if established in cities where anti-Muslim tensions persist, could in incorporating civil society try to build linkages between groups. DFID is working on community policing and since the police can play a clear role in exacerbating or

³² Varshney himself could be an excellent consultant if the mission wishes to go this route.

diminishing tensions, working with DFID on some sort of a conflict component could make sense.

There may be interesting and useful opportunities in this arena, but much more assessment work is required as a first step.

III. Focusing the Next Strategy

The huge size of India, the difficulties of working at the center and the growing power of the states raise interesting questions about how to focus a strategy that includes several sectors of endeavor. There are three options:

1. Focus on one or two states for the entire mission entire portfolio. This essentially is what the Dutch, DFID, the World Bank and the ADB are doing. The advantages are that it consolidates impact, it is easier to determine impact, multiple interventions should have a multiplier effect and perhaps produce economies of scale, and it gives the mission a bigger seat at the table (at least the state level) so it has greater influence.
2. Allow different sectoral programs to make their own choices, led by their own criteria. This appears to be the option the mission has pursued to date. This provides a diverse geographic portfolio that has broad reach (the advantage is that many states get something) but the impact is diffused and sustainability of some interventions could be at issue in the face of continuing state fiscal deficits.
3. Mix the two approaches – allow some sectoral geographic diversity where it is strongly merited but require considerable consolidation where it makes sense (for example, an emphasis on a state-level reform program to reduce the fiscal deficit should be coupled with power sector, agriculture and urban programs).

The team believes that Option 3 is perhaps the best compromise for the mission. Option 1 is not recommended. It could distort some sectoral interventions but more importantly, it seems likely that the mission will continue to invest resources in reproductive health and child survival in UP. This is not a state we recommend for other interventions, even though the World Bank is working there. While it is the largest and one of poorest states, it is not very interested in reform,³³ the Bank's SAL notwithstanding. This means that social and physical infrastructure will continue to be shortchanged by current expenditures. The state's fiscal deficit is very large. There may be more compliance on paper than in fact. For example, UP has reduced business regulations but civil servants are still following the old regulations because those produce more opportunities for graft. Citizens' charters, which have also been developed, existed only on paper as well and do not seem to be implemented. State government has been unstable and prone to frequent change, and there are growing problems with the criminalization of politics and violence in the state. There are elections in UP next year so difficult decisions on reform may be very unlikely. Donors must potentially deal with a huge number of ministries. The number stands at 92 now, as a result of coalition government. This large number of ministries accentuates the spoils system and creates policy fragmentation. The Dutch pulled out of UP due to governance issues. They think that civil society is thin, but the Indian NGO PRIA thinks that in the western hills (a tribal area) civil society has more depth. PRIA thinks that there has been little real decentralization. The team spoke to several donors and not a single one thought that it was likely that there would be much of a return on investments in UP. The mission's own experience in the health sector has

³³ Curiously, some recent World Bank documents do credit state leaders with an interest in reform, but this was not substantiated by any other source, or informant or by much real evidence of change.

been a difficult one. Even World Bank representatives, who are just embarking on a program, seemed ambivalent about being there, although they did raise the moral point of leaving failing states to fall yet further behind without making any attempt to change their views.

In an earlier section of this paper, the team recommended that Karnataka was worth a closer look. Other states should also be in the running. One of those is Madhya Pradesh. DFID is investing resources in MP's poorest districts; it is an ADB concentration state; and the state government is interested in reform. The state's approach to reform is more conservative than that of AP but good partners are still available. State leaders are talking about civil service reform and police reform still. It would be possible to work on corruption issues. They are in a bigger power sector bind than they were previously, since they lost their generating capacity to the new state of Chattisgarh. They will have to substantially reduce or eliminate electricity subsidies. MP provides a good environment for decentralization. Chief Minister Singh seems committed to greater participation. Some real authority for schools and health services has been pushed down to local levels. The state has a strong civil society, especially at the local level. It is less progressive on urban issues at the moment.

Other states worth consideration as noted previously in this report include Maharashtra, Gujarat, Chattisgarh and perhaps Tamil Nadu. The latter is progressive on many fronts but has a reputation for being very politicized. If the mission chooses to concentrate some level of resources in a given state, a list of criteria that combine general factors (e.g. commitment to reform) and sectoral ones should be developed and then a short-list of states investigated further. The Dutch Government undertook a comparable exercise when they were selecting states for concentration and their list of criteria might be worth reviewing.

We do not recommend AP because both DFID with its considerable resources and the World Bank are working there.

IV. Next Steps

More research and analysis are needed prior to making any decisions about whether to develop an integrated DG-sectoral program or programs, a free-standing one, or both. Additional exploration of all areas may not be needed. If there are particular suggestions that are interesting, the focus could be on these, once the mission has had a chance to review the report and discuss it with the embassy. One idea raised earlier was the notion of a panel discussion in Washington with perhaps three political scientists who focus on India. This is still an option. Another is simply to do follow up fieldwork in those areas that seem to merit it. As the mission moves toward a final strategy in its other sectors, new ideas for DG integration should present themselves. The team would be happy to shape follow on analytic work once it knows where there is interest in moving forward.

Interview List

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Other Institutions

Vikram Chand, World Bank

Richard Messick, World Bank (Washington, D.C.)

Gowher Rizvi – Ford Foundation

Om Prakash Mathur – National Institute of Public Finance and Policy

N.C. Saxena - Planning Commission

Roderick Evans – Sr. Governance Adviser, DFID

Pauline Hayes – Sr. Governance Adviser, DFID

K.C. Sivaramakrishnan - Center for Policy Research

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M.S. Gill - Commissioner, Election Commission
S. Kumar – Society for Civil Rights
Jeanine Van Crippen – State Coordinator, AP, Netherlands Embassy
Ellen van Reesch, State Coordinator, Kerala, Netherlands Embassy
Chandan Dutta – PRIA
Justice Verma – National Human Rights Commission

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